

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ORLANDO GARCIA,

Plaintiff,

v.

JEANETTE LEE WONG,

Defendant.

Case No. [21-cv-06754-JD](#)

**ORDER TO SHOW CAUSE RE
DISMISSAL**

In this ADA case, the Court previously denied plaintiff's motion for service by publication, Dkt. No. 12. This was because plaintiff's request for service by publication was filed on March 30, 2022, in violation of the Court's order to complete service by March 14, 2022; the request was also inexplicably made under California procedural law in this federal action, and it lacked good cause. Dkt. No. 13.


Subsequently, plaintiff filed on the docket a "Proof of Service of Summons." Dkt. No. 14. Plaintiff used a California state court form in this case that he filed in federal court, *see* Dkt. No. 1, but the bigger problem was that the proof indicated service had been made on "Sing & Yuen Properties, LLC," Dkt. No. 14 at 1, which is not an entity that plaintiff named as a defendant in his amended complaint. Dkt. No. 7.

After that, plaintiff filed a "motion for administrative relief requesting leave to file motion to serve defendant via publication." Dkt. No. 15. The motion "apologize[d] for relying on California law in the motion, as well as filing it 16 days after the deadline to effectuate service," as well as "admit[ted] that [plaintiff's counsel] 'dropped the ball.'" *Id.* at 1-2. In effect, this was a motion for reconsideration but it failed to meet the District's rules for such motions, *see* Civil Local Rule 7-9, and in any event, it failed to establish good cause for permitting plaintiff to "re-file the motion to serve via publication." Dkt. No. 15 at 2. The re-filing request is denied.

Plaintiff is ordered to show cause in writing by May 27, 2022, why this case should not be dismissed for failure to serve defendant within the 90-day time limit set out in Federal Rule of Civil Procedure 4(m). Plaintiff is advised that a failure to timely file an adequate response will result in a dismissal without prejudice under that rule.

IT IS SO ORDERED.

Dated: May 16, 2022



JAMES DONATO
United States District Judge